## REMARKS

Claims 1-64 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

**Section 112, First Paragraph, Rejection:**

The Examiner rejected claims 1-64 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner submits that the amended feature of "said peer-to-peer platform protocols are distinct from the at least one network transport protocols" is not supported by the instant specification. The Examiner admits that the instant specification provides support for phrases such as "transport protocol independent," "absence of help from other applications and/or services" or "regardless of the implementation of that connection", but submits that it does not provide support for "distinct", as in the above-referenced limitation.

Applicants remind the Examiner that, as **repeatedly** stated by the Board of Patent Appeals & Interferences and by the Court of Appeals for the Federal Circuit, it is **well settled** that the claimed invention does not have to be described in *ipsis verbis* in order to satisfy the description requirement of §112. *Jacobs v. Lawson*, 214 USPQ 907, 910 (B.P.A.I. 1982). "The subject matter of the claim need not be described literally in order for the disclosure to satisfy the description requirement." *M.P.E.P. 2163.02* (emphasis added). As longs as the description "allows persons of ordinary skill in the art to recognize that [the inventors] invented what is claimed" then the description requirement is satisfied. *In re Gosteli*, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989).

Applicants assert that the very passages quoted by the Examiner provide clear support for the limitation, "said peer-to-peer platform protocols are distinct from the at least one network transport protocols." For example, one quoted passage describes that these protocols are independent of transport protocols. Protocols that are independent of

each other must be distinct from each other, by any common understanding of the term "distinct", while protocols that are not distinct from each other (e.g., protocols that are the same, that are co-mingled, or that are usable only in combination) clearly cannot be independent of each other, as described in Applicants' specification. Similarly, protocols that rely on help from other applications/services or that depend on the implementation of an underlying connection could not be considered to be distinct from those applications/services/implementations, but those that do not depend on other applications/services or underlying implementations would be understood to be distinct from those application/services/implementations. Additional passages, such as on page 78, lines 24-27, further describe, "The peer-to-peer platform protocols preferably do not require periodic messages of any kind at any level to be sent within the network, and thus preferably do not require periodic polling, link status sensing, or neighbor detection messages, and may not rely on these functions from any underlying network transport in the network" (emphasis added). **Finally, the Examiner's own remarks, on page 5 of the Final Action mailed March 21, 2008, equate distinctness with independence, "Black teaches of a system for a messaging protocol between devices that is independent, i.e., distinct from a network transport protocol" (emphasis added).** Therefore, in at least the Examiner's quoted passage including the phrase "transport protocol independent," Applicants' specification clearly supports the use of the term "distinct" as recited.

Applicants assert that when Applicants' specification is considered as a whole, one skilled in the art would easily recognize the claimed invention. The Examiner's application of the description requirement in the Final Action is "yet another instance of the sort of 'hypertechnical application' of the written description requirement of §112" that has been **repeatedly criticized** by the court. *In re Driscoll*, 195 USPQ 434, 438 (C.C.P.A. 1977); *In re Johnson*, 558 F.2d 1008, 194 USPQ 187 (CCPA 1977); *Engineering Development Laboratories v. Radio Corp. of America*, 68 USPQ 238, 241-42 (2d Cir. 1946).

Additionally, **the Examiner has the burden** of presenting **evidence or reasons why** persons skilled in the art would not recognize in the disclosure a description of the claimed invention. *Ex parte Sorenson*, 3 USPQ2d 1462, 1463 (Bd. Pat. App. & Inter. 1987). The Examiner has not met her burden for presenting evidence or reasons why persons skilled in the art would not recognize in the disclosure a description of the claimed invention. The Board has held that "a bare assertion by the Examiner" is insufficient for an assertion that the description requirement is not met. *Sorenson*, 3 USPQ2d at 1463 (Bd. Pat. App. & Inter. 1987). The Examiner has the burden to present evidence or reasons, not just bare assertions, why persons skilled in the art would not recognize support for the claimed invention. *In re Wertheim*, 191 USPQ 90 (CCPA 1976).

The Examiner includes similar reasoning in submitting that the amended features of independent claims 25 and 45, "the at least one of the one or more peer-to-peer platform protocols is distinct from any underlying network transport protocols." Therefore, the arguments presented above apply to these claims, as well.

For at least the reasons above, Applicants respectfully request removal of the rejection of claims 1-64 under 35 U.S.C. § 112, first paragraph.

**Section 103(a) Rejections:**

The Examiner rejected claims 1-3, 5-7, 11-15, 18, 21, 22, 25-27, 29-31, 35-40, 43, 45-47, 49-51, 55-60 and 63 under 35 U.S.C. § 103(a) as being unpatentable over Davis et al. (U.S. Patent 6,105,064) (hereinafter "Davis") in view of Dreke et al. (U.S. Publication 2002/0035594) (hereinafter "Dreke") and Black et al. (U.S. Patent 5,878,056) (hereinafter "Black"), claims 4, 8-10, 28, 32-34, 48 and 52-54 as being unpatentable over Davis, Dreke and Black in view of Barker et al. (U.S. Patent 5,931,916) (hereinafter "Barker"), claims 16 and 17 as being unpatentable over Davis, Dreke and Black in view of Ivanoff (U.S. Patent 5,517,622), claims 19, 20, 41, 42, 61 and 62 as being unpatentable over Davis, Dreke and Black in view of Antur et al. (U.S. Patent 6,212,558) (hereinafter

"Antur"), and claims 23, 24, 44 and 64 as being unpatentable over Davis, Dreke and Black in view of Zhu et al. (U.S. Patent 5,768,557) (hereinafter "Zhu"). Applicants respectfully traverse these rejections for at least the following reasons.

Regarding claim 1, contrary to the Examiner's assertion, Davis in view of Dreke and Black fails to teach or suggest all of the limitations of claim 1. In the Final Action mailed March 21, 2008, the Examiner includes many of the same remarks as in the previous Office Action in rejecting claim 1. Therefore, many of Applicants' arguments are repeated below, along with additional arguments directed to the Response to Arguments section of the Final Action mailed March 21, 2008.

The Examiner submits that Davis teaches *wherein each of the plurality of peer nodes comprises one or more network interfaces, wherein each network interface is configured to communicate over the network in accordance with at least one of one or more network transport protocols* in column 8, lines 21-24 ("Peer nodes"); column 9, lines 5-8 ("Endnodes establish network communication session"); and column 5, lines 40-44 ("Protocol for controlling data packets"). Applicants note that the Examiner's passages in columns 5 and 9 describe network transport protocols, as stated in column 5, lines 40-44, "More specifically, the present invention provides several protocols for controlling data packets at the transport layer or other packet transmission layer" (emphasis added). **In fact, the invention disclosed in Davis is directed to network transport layers and network transport protocols**, as described in the Field of Invention, "The present invention relates to communication over a computer network, and more particularly to a approach which employs dynamic window sizing, packet metering, and other techniques to provide an efficient and reliable network transport layer" (emphasis added). Various examples of such network transport protocols are also described in Davis, including ACP (an embodiment of Davis' claimed invention), TCP (Transmission Control Protocol) and UDP (User Datagram Protocol) on UNIX systems, protocols TP0 through TP4 of the OSI model, SPX (Sequenced Packet Exchange) and IPX (Internet Packet Exchange) in Novell NetWare systems (SPX, IPX, NOVELL, and NETWARE are trademarks of Novell, Inc.), and other protocols.

**Applicants note that the Examiner did not address the above argument in the Response to Arguments section of the Final Action mailed March 21, 2008.**

The Examiner submits that Davis teaches *wherein the plurality of peer nodes is configured to implement a peer-to-peer environment on the network according to a peer-to-peer platform comprising one or more peer-to-peer platform protocols* in column 8, lines 21-24. As noted in Applicants' previous Response, this passage merely states that a given computer "may also function as a peer in a peer-to-peer network" without describing any of the specific limitations of a peer-to-peer platform recited in the claims or mentioning *one or more peer-to-peer platform protocols*, as in claim 1. **Applicants assert that a computer may "function as a peer in a peer-to-peer network" without necessarily including a peer-to-peer platform comprising any of the specific peer-to-peer platform protocols recited in claim 1.** Merely "functioning as a peer node in a peer-to-peer network" does not require any *peer-to-peer platform* ***protocols*** *for enabling the plurality of peer nodes to discover each other, communicate with each other, and share content in the peer-to-peer environment.* The Examiner submits that Davis teaches these protocols in column 75, lines 3-5 ("Sending endnode request connection with receiving endnode); and column 9, lines 1-8 and 23-34 ("Establish connection for sending data"). Applicants assert that none of these passages, or anything else in Davis, describes peer-to-peer platform protocols of a peer-to-peer platform, as required by Applicants' claims. Davis is concerned with dynamically adjusting the propagation rate of packets between known sending and receiving nodes. Davis does not mention anything about endnodes discovering each other or about any peer-to-peer platform protocols that enable Davis's endnodes to discover each other. Instead, Davis teaches the use of protocols such as TCP, UDP, SPX, IP, IPX and ATM, all of which are described in Davis as network transport protocols (as noted above), and none of which enables peer nodes to discover each other. For instance, Davis teaches that a channel may be established between a service on one endnode and a corresponding service on another endnode. Specifically, Davis teaches that one endnode will register itself as a service and a second application on the same or on another endnode asks to connect to that name and

service type. However, the mere fact that a channel may be established between two endnodes does not imply that the two nodes are "enabled to discover each other", much less that this is enabled by a peer-to-peer platform protocol.

In the Response to Arguments section of the Office Action mailed September 21, 2007, the Examiner submits, "it is essential the receiving endnode be made known (discovered) to the sending endnode and vice versa for the two endnodes to communicate with each other." Applicants assert that the claim does not merely recite that the peer nodes are somehow made known to each other, but that they are enabled to discover each other. As noted in Applicants' previous Response, two computer systems (e.g. endnodes) may communicate with each other without discovering each other via a peer-to-peer platform protocol, or any particular protocol. For example, nodes may already be configured with an address for another node, or obtain an address in a way that does not involve a peer-to-peer protocol for enabling them to discover each other. Davis does not describe how these addresses are obtained, and there is nothing in Davis or the other cited references, to teach or suggest that this is done via a peer-to-peer platform protocol, since no such peer-to-peer platform protocols are described.

**In the Response to Arguments section of the Final Action mailed March 21, 2008,** the Examiner submits, "The peers of Davis are able to communicate with each other, and therefore, it is essential that the peers are enabled to obtain information regarding other peers, i.e., discover, in order to communicate with the other peers. The rules in which the peers discover, communicate, and share as taught by Davis are considered as the claimed peer-to-peer platform protocols." **The Examiner's assertion is plainly false.** Applicants again assert that David does not teach any "rules in which peers discover" each other via a particular protocol, but instead describes only that a channel may be established between them. As discussed above and Applicants' previous Responses, **there are many ways for two computer systems to communicate with each other without needing to discover each other via a particular protocol**. For example, Dreke teaches establishing a connection through an Internet Presence Information Server (IPIS). **Applicants assert that many other possibilities exist that**

**do not include protocols for peers to discover each other, and that absent any description at all of how connections between the endnodes of Davis are made, the references clearly cannot be said to teach or suggest such a discovery protocol.**

Applicants assert that Davis, Dreke, and Black do not describe the particular peer-to-peer platform protocols recited in claim 1. For example, these references fail to teach or suggest any peer-to-peer platform protocols for enabling peers to discover each other, *wherein to discover comprises obtaining an address for each discovered peer node*. The Examiner admits that Davis does not teach *wherein to discover comprises obtaining an address for each discovered peer node* and relies on Dreke to teach this limitation in paragraph [0017], "Dreke teaches of peers obtaining IP addresses of interested peers." **However, this passage clearly does not teach a peer-to-peer discovery protocol that comprises obtaining an address for each discovered peer.** Instead, this passage describes three client computers establishing a connection through an Internet Presence Information Server (IPIS), "In 301, Peer A first transmits to IPIS 4 the following information: his/her newly assigned network (Internet Provider (IP)) address; a list of peers whose Internet presence are of interest to Peer A; and a request for a list of peers who are interested in the Internet presence of Peer A. In this example, the list transmitted by Peer A includes Peer B and Peer C. In 302, IPIS 4 responds to Peer A's list by transmitting a list including the last known address, such as an IP addresses for Peer B and Peer C even though the IP address for Peer B is out of date. During 302, IPIS 4 also responds to Peer A's request for a list of peers interested in Peer A's presence with a message indicating no peers are currently interested in his/her presence. Once IPIS 4 transmits these lists to Peer A, Peer A will no longer communicate with IPIS 4 during this network session." **This clearly does not describe a peer-to-peer platform protocol for enabling peers to discover each other, as recited in 1.** Instead this describes a mechanism to establish a connection between two known peers, in which locating the peers and establishing the connection are managed by the IPIS server. **Therefore, Dreke clearly does not overcome the deficiency of Davis in teaching the above-referenced limitation.**

In the Response to Arguments section of the Office Action mailed September 21, 2007, the Examiner submits that the claims are given their broadest reasonable interpretation, and that in this case, the Examiner considers the feature of "to discover" as "to make known" in the interpretation of the claim (as in Webster's Third New International Dictionary 1967). Applicants again note that the claim requires that peer nodes are enabled to discover each other, not merely to be made known to each other (e.g., by an external mechanism or central server, as in Dreke). **Applicants again assert that Davis in view of Dreke clearly does not teach a protocol that enables peer nodes to discover each other, according to the limitations of claim 1. By definition, the centralized IPIS sever mechanism of Dreke does not involve a peer-to-peer platform protocol for enabling peer nodes to discover each other. Applicants further note that there are many ways (such as that described in Dreke) that a device may obtain an address for another device that do not involve a peer-to-peer platform protocol.** Davis and Dreke, whether considered singly or combination, clearly do not describe the peer-to-peer platform protocol for enabling peer nodes to discover each other, according to the limitations of claim 1.

**In the Response to Arguments section of the Final Action mailed March 21, 2008,** the Examiner repeats his remarks above regarding the teachings of Davis involving a peer discovery protocol, and also his remarks above regarding the teachings of Dreke involving obtaining an address for other peers. The Examiner further submits that the claims do not distinguish the claimed peer-to-peer platform protocol from the "many ways," and that the teachings of Davis and Dreke teach the scope of the "peer-to-peer platform protocols." Applicants disagree and note that **the claims explicitly recite** "peer-to-peer platform protocols for enabling the plurality of peer nodes to discover each other … wherein to discover comprises obtaining an address for each discovered peer node." Therefore, at a minimum, the claims require one or more specific protocols and that peers discover each other, rather than being made known to each other by a centralized IPIS server, as in Dreke. Furthermore, claim 1 requires that to discover comprises obtaining an address for each discovered peer node. **Thus, contrary to the**

**Examiner's assertion, claim 1 clearly distinguishes over the "many ways" and over the teachings of the cited references.**

**In the Final Action mailed March 21, 2008,** the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Davis and Dreke for peers to obtain the IP addresses of other peers. The Examiner submits that the motivation for the suggested combination is that Dreke's teachings would provide contact information including last known information of peers to allow a peer to contact other peers (citing paragraphs [0018-0019] of Dreke). This passage, however, describes that the IPIS transmits a list including the last known address. This clearly does not teach or suggest a peer-to-peer platform protocol for enabling peer nodes to discover each other, as required by claim 1. Therefore, even if the teachings of Dreke were incorporated into the system of Davis, the result would not teach the above-referenced limitations of Applicants' claim 1.

Further regarding claim 1, contrary to the Examiner's assertion, Davis in view of Dreke and Black fail to teach or suggest *wherein said establishing, said transmitting, said receiving, and said retransmitting are performed according to at least one of the one or more peer-to-peer platform protocols and wherein said peer-to-peer platform protocols are distinct from the at least one network transport protocols*.

The Examiner admits that Davis and Dreke do not teach this limitation and relies on Black to teach it. The Examiner submits that Black teaches implementing a messaging system that is independent of transport protocols, in column 10, lines 63-67. This passage actually states, "The message format and the safe movement protocol are transport layer independent so that MCAs can support different transport protocols on different channels." Applicants assert that there is nothing in Black that describes the "message format" and "safe movement protocol" as peer-to-peer platform protocols, or anything about a peer computing system, at all. Therefore, having a "message format" and a "safe movement protocol" that are transport layer independent does not teach or suggest that peer-to-peer platform protocols, such as the specific peer-to-peer platform

protocols recited in claim 1, should be transport layer independent. **None of the cited references include such protocols, and the system of Davis is specifically directed to transport protocols (e.g., ACP).**

**In the Response to Arguments section of the Final Action mailed March 21, 2008,** the Examiner disagrees, submitting, "The said establishing, said transmitting, said receiving, and said retransmitting between the peers are considered as the peer-to-peer platform protocols. Davis does not specifically teach that the peer-to-peer platform protocols are distinct from the at least one network transport protocols. Black teaches of a system for a messaging protocol between devices that is independent, i.e., distinct from a network transport protocol." **Applicants again assert that none of the cited references teach the peer-to-peer platform protocols of claim 1. Therefore, the combination of references cannot teach that such protocols are (or would benefit from being) distinct from network transport protocols.**

**In the Response to Arguments section of the Final Action mailed March 21, 2008,** the Examiner submits that it would have been obvious to one of ordinary skill in the art to implement the peer-to-peer platform protocols as taught by Davis as protocol independent of transport protocols as taught by Black, which would improve Davis' teachings by allowing the peer-to-peer protocol including said steps as taught by Davis to be implemented regardless of the transport protocols and provide reliable data transmission for different transport protocols. Applicants assert that the Examiner's stated reason for combining the references is unsupported in the cited art. As discussed above, Davis is directed to techniques to provide an efficient and reliable network transport layer, i.e., to network transport protocols. **Therefore, it does not make sense to implement the teachings of Davis independent of such transport protocols, nor is it clear if or how this could be accomplished. Furthermore, since Davis does not teach the peer-to-peer protocols of Applicants' claim, the combination of the references would still not result in Applicants' claimed invention.**

Applicants remind the Examiner that to establish a *prima facie* obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974), MPEP 2143.03. As shown above, there is no doubt that the cited art does not teach or suggest all limitations of the claim 1, nor has the Examiner provided a sufficient reason to combine the references.

For at least the reasons above, the rejection of claim 1 is not supported by the cited art and removal thereof is respectfully requested.

Claims 25 and 45 include limitations similar to the above-referenced limitations of claim 1 and were rejected for similar reasons. Therefore, the arguments presented above apply with equal force to these claims, as well.

Applicants also assert that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the rejections have been shown to be unsupported for the independent claims, a further discussion of the dependent claims is not necessary at this time.

## CONCLUSION

Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-07400/RCK.

Respectfully submitted,

/Robert C. Kowert/
Robert C. Kowert, Reg. #39,255
Attorney for Applicants

Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C.
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8850

Date: May 21, 2008